UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PROGRESSIVE NORTHERN INSURANCE COMPANY, as Assignee and Subrogee for George Lassanske, Plaintiff, v. FLEETWOOD ENTERPRISES, INC., et al., Defendants.	CASE NO. C04-1308-MAT ORDER RE: DISPOSITIVE MOTIONS

INTRODUCTION AND BACKGROUND

This matter concerns property damage sustained to a motor home owned by George and Arlene Lassanske and insured by plaintiff Progressive Northern Insurance Company. Plaintiff's third amended complaint (Dkt. 24) raises negligence, breach of express and implied warranties, strict liability, and breach of contract claims against the following defendants: (1) Fleetwood Enterprises, Inc. and Fleetwood Motor Homes of Indiana, Inc. (collectively "Fleetwood") – manufacturer/seller of the Fleetwood motor home purchased by the Lassanskes; (2) Spartan Motors, Inc. and Spartan Motors Chassis, Inc. (collectively "Spartan") – manufacturer of chassis and component parts of the motor home; (3) Cummins Engine, Co., Inc. ("Cummins") – manufacturer of engine incorporated into the chassis of the motor home; (4) Cummins Great

Lakes, Inc. ("Great Lakes") – distributer of Cummins' products in Wisconsin and Upper Michigan which performed repairs on the motor home pursuant to a Cummins' recall relating to an air compressor defect in the motor home; and (5) Cummins NPower, LLC ("NPower") – entity which Cummins maintains purchased the assets of Great Lakes after that entity ceased doing business under that name on March 31, 2002 and that plaintiff asserts is the successor of Great Lakes following a merger of the two entities.

On May 19, 2001, Cummins sent Mr. Lassanske a recall letter urging him to contact his nearest "Cummins Distributor" to arrange for repairs relating to an air compressor defect in the motor home. (Dkt. 47, Ex. D.) In response to that letter, Mr. Lassanske took his motor home to Great Lakes, in Wisconsin. Great Lakes performed the necessary repairs to the motor home pursuant to Mr. Lassanske's warranty on June 29, 2001. (Dkt. 35, Ex. A.) Additionally, NPower later performed engine work on the motor home in Wisconsin on May 10 and May 16, 2002. *Id.* The motor home caught fire and sustained damage while being driven in Washington State on May 30, 2002.

The Court must now consider four pending dispositive motions in this case: (1) Fleetwood's Motion for Summary Judgment (Dkt. 75); (2) Great Lakes/NPower's Motion to Dismiss for Lack of General Personal Jurisdiction (Dkt. 88); (3) Cummins' Motion for Summary Judgment (Dkt. 89); and (4) Plaintiff's Motion for Summary Judgment (Dkt. 82). [1] Having considered pleadings filed in support of and in opposition to the motions, along with the remainder of the record, and, being fully advised, the Court finds and concludes as follows:

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[1] As indicated below, Spartan seeks to join the summary judgment motions filed by Fleetwood and Cummins. (Dkts. 94 & 98.)

DISCUSSION

A. Fleetwood's Motion for Summary Judgment

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c);*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. *Celotex*, 477 U.S. at 322-23. "[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (citing Fed. R. Civ. P. 56(e)).

Fleetwood explains that plaintiff's expert in this case, Michael Schoenecker, determined that the fire in the motor home started because a positive cable coming from the battery shut off switch and the grounding cable from the starter motor were routed too close together. (Dkt. 72, Ex. 1.) Fleetwood notes that the Cummins engine installed in the motor home was supplied to it as an integrated part of the chassis manufactured by Spartan. It asserts its only involvement with the chassis is to take the ends of the wires that lead from the chassis and attach the wires and the chassis to the body of the motor home, but that, in so doing, Fleetwood does not move the positive cable coming from the battery shut off switch or the grounding cable from the starter motor, both of which are installed at the Spartan factory. (Dkt. 71, ¶¶ 5-9) (stating that such wires are clamped in place by Spartan.)) Fleetwood further notes that, according to Spartan's expert,

Allen K. Brethorst, the wires causing the fire in this motor home had to have been rerouted in order to perform the recall repair on the engine compressor. (Dkt. 72, Ex. 3.) (*But see* Dkt. 85, Ex. F5 at 26-27 (Cummins' expert, Michael Linscott, disagrees with Spartan's expert, and opines that the relevant wires were located in place during the assembly of the chassis and that the abrasion took place over the life of the unit.))

1. Product Manufacturer Claim:

Fleetwood first argues its entitlement to dismissal in that it is not a "manufacturer" of a "relevant product" as those terms are defined in the Washington Products Liability Act ("WPLA"), RCW 7.72 *et seq*. Pursuant to the WPLA:

> "Manufacturer" includes a product seller who designs, produces, makes, fabricates, constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer. The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.
>
> A product seller acting primarily as a wholesaler, distributor, or retailer of a product may be a "manufacturer: but only to the extent that it designs, produces, makes, fabricates, constructs, or remanufactures the product for its sale. A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer shall not be deemed a manufacturer. A product seller that did not participate in the design of a product and that constructed the product in accordance with the design specifications of the claimant or another product seller shall not be deemed a manufacturer for the purposes of RCW 7.72.030(1)(a).

RCW 7.72.010 (2). The relevant product "is that product or its component part or parts, which gave rise to the product liability claim." RCW 7.72.010 (3).

Fleetwood asserts that the relevant products in this case are the two wires on the chassis that rubbed together to create the short causing the fire. They further assert that those wires are not modified after leaving Spartan's facility and that there is no evidence the portion of the motor home manufactured by Fleetwood caused or contributed to the fire. They cite *Parkins v. Van*

Doren Sales, Inc., 45 Wn. App. 19, 24-25, 724 P.2d 389 (1986), as supporting that, where a component of a final product can be identified as the cause of the injury, the component, rather than the product as a whole, is the relevant product: "If we consider the entire assembly as a unit and inquire whether there was liability as a component manufacturer or supplier, the 'relevant product' is the component if the component gave rise to the product liability claim." The court in that case held: "Because Ms. Parkins was injured by machinery purchased from Van Doren, as opposed to other equipment which made up the pear processing unit, those parts constitute 'relevant' products for the purposes of the act." *Id*. at 25. Fleetwood avers that, because it did not manufacture the relevant product, it is entitled to dismissal of all claims against it based on its alleged role as a manufacturer.

Plaintiff responds that Fleetwood was the primary manufacturer of the motor home, including all of its component parts. It asserts that Fleetwood's argument renders the term "relevant product" in the WPLA meaningless because, according to that argument, only component parts of products which malfunction could be deemed relevant products within the ambit of the WPLA. Plaintiff distinguishes *Parkins* as providing a method to determine whether liability exists against any component manufacturer when the product as a whole causes injury; that is, it should be used to determine whether component manufacturers of the Fleetwood motor home should share liability, but is irrelevant as to whether Fleetwood itself is liable.

Plaintiff also argues that Fleetwood held itself out to the public as a manufacturer, noting marketing materials and the "Fleetwood" logo on the back of the motor home. *See* RCW 7.72.01 (2) ("The term also includes a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer.") It asserts that, without the provision pertaining to entities holding

themself out to the public as manufacturers, for example, Ford Motor Company could successfully argue that it is not liable as a manufacturer for a fire in a Mustang because it did not actually produce the Delco spark plug that malfunctioned and caused the fire destroying the automobile.

Finally, plaintiff asserts that the question of whether Fleetwood performed only "minor assembly" is a finding properly reserved for resolution by the jury. *See* RCW 7.72.01 (s) ("A product seller who performs minor assembly of a product in accordance with the instructions of the manufacturer shall not be deemed a manufacturer.") Plaintiff adds that, given that the engine is a major component of the motor home, its incorporation into the motor home could hardly be called minor. Plaintiff also notes that Fleetwood designed the motor home, meaning it necessarily had to design the motor home to incorporate installation of the chassis and engine.

In its reply, Fleetwood asserts that the Washington Legislature intended the WPLA to place liability only on those entities that actively caused injury; that is, on those manufacturers who had a role in the formation of the defective part. It avers that the WPLA definition of relevant product allows for liability to be placed on either the manufacturer of the whole product, component parts, or both, depending on which of those entities was actively involved in the design or construction of the product that caused the injury. Fleetwood avers that, otherwise, the statute would read: "product *and* its components that give rise to the claim." RCW 7.72.010 (2) (emphasis added). It argues that, where a specific component can be identified as the sole cause of the injury and there is no evidence that the manufacturer of the end product altered that component or contributed to the injury in any way, that manufacturer is entitled to dismissal. Fleetwood also notes that the three experts designated by plaintiff in this case opined that they had no opinions or evidence that Fleetwood acted or failed to act in a manner that caused or

contributed to the fire.

As noted by plaintiff, *Parkins* did not involve a determination as to whether *either* a component part manufacturer *or* the overall manufacturer of a product was liable; the plaintiff in that case sued only the manufacturer of the component part. However, *Parkins* nonetheless supports the conclusion that where a particular component can be identified as giving rise to the claim, that component, rather than the end product as a whole, may be considered the relevant product. *See* 45 Wn. App. at 19, 24-25 ("If we consider the entire assembly as a unit and inquire whether there was liability as a component manufacturer or supplier, the 'relevant product' is the component if the component gave rise to the product liability claim."; "Because Ms. Parkins was injured by machinery purchased from Van Doren, as opposed to other equipment which made up the pear processing unit, those parts constitute 'relevant' products for the purposes of the act." 45 Wn. App. 19, 24-25. *Accord Sepulveda-Esquivel v. Central Machine Works, Inc.*, 120 Wn. App. 12, 18-19, 84 P.3d 895 (2004) (citing *Parkins* for the same principles). Plaintiff's argument, in contrast, reads out the disjunctive aspect of the definition of relevant product: "that product *or* its component part or parts, which gave rise to the product liability claim." RCW 7.72.010 (3) (emphasis added). *See also Cadwell Indus's, Inc. v. Chenbro America, Inc.* , 119 F. Supp. 2d 1110, 1114 (E.D. Wash. 2000) ("The WPLA defines the 'relevant product' as that product or component which gave rise to the product liability claim.") (emphasis removed from original).

Significantly, plaintiff presents no evidence showing that the overall motor home, as opposed to the chassis, engine, and/or the relevant wires, gave rise to any damage. (*See generally* Dkt. 85 (declaration of plaintiff's expert.)) Plaintiff, therefore, fails to establish that Fleetwood is properly considered a manufacturer of the relevant product(s) in this case.

The next question is whether Fleetwood could be deemed "a product seller or entity not otherwise a manufacturer that holds itself out as a manufacturer." RCW 7.72.010(2). Clearly, Fleetwood holds itself out as the manufacturer of the motor home as a whole. However, there is no evidence Fleetwood holds itself out as the manufacturer of the chassis, engine, and/or the relevant wires. Accordingly, plaintiff also fails to establish that Fleetwood held itself out as the manufacturer of the relevant product(s) in this case.

Finally, there remains the question of whether Fleetwood performed only "minor assembly of a product in accordance with the instructions of the manufacturer[,]" and, therefore, should "not be deemed a manufacturer." RCW 7.72.010 (2). Fleetwood incorporated the chassis into the motor home. As explained by its expert, Doug Hass:

> These wires to the starter and the surrounding wires (meaning secured to the frame in the same local area) are originally selected, designed, engineered, fabricated per Spartan specifications and installed by Spartan Motors of Charlotte, Michigan. . . Fleetwood does not alter the referenced wires at all (meaning re-route, 'tap into", cut, splice, disconnect and reattach or change location) for any purpose. During this time period the motor home was manufactured Fleetwood would have purchased the completed and fully functional chassis directly from Spartan Motors. A completed assembly and fully operational is defined as a chassis that is able to be started and driven as it is received. Fleetwood would have 'tapped into' the electrical system at predetermined locations with specific and dedicated connectors per design requirements while following the 'Spartan Body Builders Handbook.' . . . As part of the final assembly Fleetwood builds the 'box' on top of the chassis and it becomes a completed motor home.

(Dkt. 33, Ex. A.) Also, plaintiff's expert states: "My investigation in this case revealed that the positive battery cable and the ground cable were installed on the vehicle as part of the chassis manufacture by Spartan Chassis, Inc." (Dkt. 85 at 8.)

Given the above, it is not at all clear, as argued by plaintiff, that this minor assembly issue raises a question of fact. *Cf. Almquist v. Finley School District No. 53*, 114 Wn. App. 395, 404,

57 P.3d 1191 (2002) (rejecting argument that whether a school district which used tainted beef to make tacos was a manufacturer was a question of fact, given that the material facts – that the district stored, thawed, cooked, drained, rinsed, seasoned, and mixed the frozen beef to make tacos – were not disputed, and constituted producing, making, fabricating, and constructing under the definition of a manufacturer of a relevant product). Instead, the facts show that, if anything, Fleetwood's involvement with the relevant product(s) in this case involved nothing more than minor assembly, thereby excluding them from the definition of a manufacturer of the relevant product under the WPLA.

2. Product Seller Claim:

Pursuant to the WPLA:

> (1) Except as provided in subsection (2) of this section, a product seller other than a manufacturer is liable to the claimant only if the claimant's harm was proximately caused by:
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> (a) The negligence of such product seller; or
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> (b) Breach of an express warranty made by such product seller; or
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> (c) The intentional misrepresentation of facts about the product by such product seller or the intentional concealment of information about the product by such product seller.
>
> (2) A product seller, other than a manufacturer, shall have the liability of a manufacturer to the claimant if:
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> (a) No solvent manufacturer who would be liable to the claimant is subject to service of process under the laws of the claimant's domicile or the state of Washington; or
>
> (b) The court determines that it is highly probable that the claimant would be unable to enforce a judgment against any manufacturer; or
>
> (c) The product seller is a controlled subsidiary of a manufacturer, or the

> manufacturer is a controlled subsidiary of the product seller; or
>
> (d) The product seller provided the plans or specifications for the manufacture or preparation of the product and such plans or specifications were a proximate cause of the defect in the product; or
>
> (e) The product was marketed under a trade name or brand name of the product seller.

RCW 7.72.040.

Fleetwood avers the absence of any of the above-described conditions to create potential liability on its part. It asserts a lack of any evidence of negligence and that none of the expert witnesses have suggested that the cause of the fire was linked to any of its actions.

Plaintiff counters that subsections (2)(a) and (2)(e) of RCW 7.72.040 apply in this case to hold Fleetwood liable as a product seller. With respect to the latter, plaintiff notes that the product was clearly marketed under Fleetwood's brand name, as the "Fleetwood American Eagle." With respect to the former, plaintiff asserts that, because Great Lakes is no longer in business, there are substantial grounds to hold Fleetwood liable as a product seller.

First, plaintiff's solvency argument lacks merit in that there are other solvent manufacturers who could be held accountable, including Spartan and Cummins. Second, because plaintiff's trade/brand name argument is contingent on a determination that the motor home itself is the "relevant product," and because the Court does not find as such, subsection (2)(e) of RCW 7.72.040 also does not apply. Thus, the Court concludes that Fleetwood is not properly considered liable as a product seller under the WPLA.[2]

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[2] Fleetwood also argues it is not liable as a manufacturer for damages caused as a result of the recall repair, which occurred after the motor home left Fleetwood's control. *See Padron*

3. Defect at Time of Manufacture:

Plaintiff additionally argues Fleetwood's liability based on a defect existing at the time of manufacture, quoting the WPLA:

> A product manufacturer is subject to strict liability to a claimant if the claimant's harm was proximately caused by the fact that the product was not reasonably safe in construction or not reasonably safe because it did not conform to the manufacturer's express warranty or to the implied warranties under Title 62A RCW. . . . A product is not reasonably safe in construction if, *when the product left the control of the manufacturer*, the product deviated in some material way from the design specifications or performance standards of the manufacturer, or deviated in some material way from otherwise identical units of the same product line.

RCW 7.72.030(2)(a) (emphasis added). Plaintiff asserts that it is undisputed that the motor home was defective at the time it left Fleetwood, as evidenced by the recall. Plaintiff states that this defect affected the driver's ability to steer, thus rendering the motor home not reasonably safe. Plaintiff argues that, but for the defect, the recall would not have been issued, and the related work would not have been performed.

Fleetwood responds that the defect in the Cummins engine is irrelevant because it did not proximately cause the fire. It asserts that that defect was the potential for the failure of the compressor that could lead to loss of power steering – which was not the proximate cause of damage in this case. RCW 7.72.030(1) ("A product manufacturer is subject to liability to a

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v. Goodyear Tire & Rubber Co., 34 Wn. App. 473, 476 (1983) (a "plaintiff may be barred from recovery if the product underwent a substantial change in its condition after leaving the manufacturer.") However, given the determination that Fleetwood is not properly characterized as either a manufacturer or seller of the relevant product under the WPLA, the Court need not address this argument. Moreover, as discussed below, causation in this case presents an issue of material fact. For this reason, Spartan's attempt to join in Fleetwood's motion based on the theory of subsequent modification of the wire must also be denied.

claimant if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was not reasonably safe as designed or not reasonably safe because adequate warnings or instructions were not provided.") Fleetwood notes that proximate cause requires both cause in fact and proximity between the negligent act and injury. *Mehrer v. Easterling*, 71 Wn.2d 104, 108, 426 P.2d 843 (1967). Noting expert opinions that it is likely the wires were moved during the recall work, Fleetwood asserts that Cummins' negligence is an independent intervening cause and the proximate cause of the fire.

Plaintiff does not present any evidence that the recall-related defect proximately caused the fire. Also, this argument ultimately rests on the assumption that the wires were re-routed during the repair necessitated by the recall, and that this re-routing caused the fire. However, as discussed below, this issue raises a question of material fact. *See Almquist*, 114 Wn. App. at 406 (proximate cause is generally a question of fact for the jury; in particular, "[c]ause in fact requires a direct unbroken sequence between some act and the complained of event[]" and is "generally a question for the jury.") Accordingly, the Court rejects plaintiff's argument that Fleetwood is liable based on a defect at the time of the manufacture of the motor home.

B. Great Lakes/NPower's Motion to Dismiss for Lack of General Personal Jurisdiction

The Court previously determined that plaintiff failed to establish specific personal jurisdiction over Great Lakes and NPower, but found it appropriate to allow jurisdictional discovery on the issue of general personal jurisdiction based on the existence of an alter ego relationship between Cummins and Great Lakes/NPower. (Dkt. 58) Great Lakes/NPower now

move to dismiss based on a lack of general personal jurisdiction.[3]

Plaintiff bears the burden of establishing personal jurisdiction over defendants. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). Where, as here, the Court elects to resolve the motion on the parties' briefs, exhibits, and affidavits, rather than hold an evidentiary hearing, plaintiff need only "make a prima facie showing of jurisdictional facts in order to defeat [the] motion to dismiss." *Farmers Ins. Exch. v. Portage La Prairie Mut. Ins. Co.*, 907 F.2d 911, 912 (9th Cir. 1990). "'That is, the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant.'" *Doe*, 248 F.3d at 922 (quoting *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)). The Court takes plaintiff's version of the facts as true for purposes of a Rule 12(b)(2) motion to dismiss, and resolves any conflicts in the evidence set forth in the affidavits in plaintiff's favor. *Id.*

The exercise of personal jurisdiction over a nonresident defendant requires both the satisfaction of the requirements of the forum state's long-arm statute, and the requirements of federal due process. *Chan v. Society Expeditions* , 39 F.3d 1398, 1404-05 (9th Cir. 1994). Washington's long-arm statute confers personal jurisdiction to the extent due process allows. *Id.* at 1405. "Where the forum's long-arm statute is coextensive with due process, as is Washington's, the focal inquiry becomes whether an exercise of jurisdiction comports with Constitutional due process." *IP Innovation, L.L.C. v. RealNetworks, Inc.*, 310 F. Supp. 2d 1209, 1212 (W.D. Wash.

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[3] Plaintiff argues that this motion was untimely, noting that Great Lakes/NPower wrongly noted this dispositive motion for three Fridays, as opposed to the four Fridays required by Local CR 7(d)(3). However, a motion wrongly noted is not, for that reason, untimely. Plaintiff also generally avers prejudice at having to reply a week earlier than required by the local rule. However, plaintiff made no attempt to correct the noting date or to simply respond to the motion within the proper time frame.

2004) (citing, *inter alia*, *Chan*, 39 F.3d at 1405 and Wash. Rev. Code § 4.28.185).

Satisfaction of due process occurs when a nonresident defendant has "'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940))). Jurisdiction may be either general or specific. Also, in addition to establishing the requisite contacts, the assertion of jurisdiction must be found reasonable. *Doe,* 248 F.3d at 925 (citing *Amoco Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d 848, 851 (9th Cir. 1993)).

General jurisdiction, at issue here, requires that contacts with the forum be "continuous and systematic," and applies whether or not the cause of action arises from those contacts. *Helicopteros Nacionales de Columbia, S.A.* , 466 U.S. at 414-16. While it is undisputed that Cummins is subject to general jurisdiction in this Court, the question remains as to whether Great Lakes/NPower are likewise subject to this Court's jurisdiction based on their relationship with Cummins.

It is well established that the mere existence of a parent-subsidiary relationship is not sufficient to confer personal jurisdiction over the parent based on the subsidiary's forum contacts. *Doe,* 248 F.3d at 925. "[A] parent corporation may be directly involved in the activities of its subsidiaries without incurring liability so long as that involvement is 'consistent with the parent's investor status[.]'" *Id.* at 926 (quoting *United States v. Bestfoods*, 524 U.S. 51, 72 (1998)). "Appropriate parental involvement includes: 'monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general

policies and procedures[.]'" *Id.* (quoting *Bestfoods*, 524 U.S. at 72).

However, the contacts of a subsidiary may be imputed to the parent under two exceptions – where the subsidiary is the parent's alter ego, or where the subsidiary acts as the parent's general agent. *Harris Rutsky & Co. Ins. Svcs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003). "An alter ego or agency relationship is typified by parental control of the subsidiary's internal affairs or daily operations." *Doe*, 248 F.3d at 926.

As indicated above, plaintiff previously argued general jurisdiction based on an "alter ego" relationship between Cummins as a parent corporation and Great Lakes and NPower as Cummins' subsidiaries. Great Lakes and NPower dispute the existence of such a relationship in their motion. Also, although allowing jurisdictional discovery, the Court previously stated:

> In this case, plaintiff does not proffer any evidence indicating the involvement of Cummins in the day-to-day activities of Great Lakes or NPower. Moreover, while pointing to their use of a "common marketing image" and the fact that Great Lakes and NPower marketed Cummins' engines as their exclusive distributors (*see* Dkt 47, Exs. B & C), plaintiff fails to show Cummins used these entities as marketing conduits to shield itself from liability. In fact, given that Cummins is itself subject to the general jurisdiction of this Court, its relationship with Great Lakes and NPower cannot be said to shield it from liability. Plaintiff also fails to put forth evidence supporting the conclusion that the entities in any respect failed to observe corporate formalities necessary to maintain corporate separateness.

(Dkt. 58 at 7-8.)

However, in response to defendants' current motion, plaintiff abandons the alter ego argument, arguing instead that the general agency exception applies. Plaintiff further posits that, should Cummins agree that it is legally responsible for the warranty recall repair work performed by Great Lakes/NPower, plaintiff would agree to dismissal of those entities. It further asserts Cummins' apparent intention to argue, upon dismissal of Great Lakes and NPower, that it cannot

be held liable for the negligence of entities no longer parties to this lawsuit.[4]

Cummins declines to agree that is legally responsible for work performed by Great Lakes, arguing plaintiff can always choose to pursue an action against Great Lakes and NPower in Wisconsin or elsewhere. The issue to be decided, therefore, is whether Great Lakes and NPower can be properly considered the agents of Cummins for the purposes of establishing general personal jurisdiction.

In order to satisfy the agency test for purposes of establishing personal jurisdiction, the plaintiff must show: "'that the subsidiary functions as the parent corporation's representative in that it performs services that are "sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services."'" *Doe*, 248 F.3d at 928-29 (quoting *Chan*, 39 F.3d at 1405 (quoting *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 423 (9th Cir. 1977))). "Consequently, '[t]he question to ask is . . . whether, in the truest sense, the subsidiar[y's] presence substitutes for the presence of the parent.'" *Id.* (quoting *Gallagher v. Mazda Motor of Am., Inc.*, 781 F. Supp. 1079, 1084 (E.D. Pa. 1992)).

Plaintiff points out that Cummins performs none of the warranty repair work on the

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[4] Plaintiff also notes that all Cummins entities are represented by the same law firm and utilize the same experts, eliminating any economic rationale for Great Lakes and NPower to avoid traveling to Seattle and presenting a defense. While defendants respond that costs are not a component in this Court's due process analysis, the Court notes that costs are relevant to the reasonableness inquiry required in the jurisdictional assessment. *See, e.g., Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1125 (9th Cir. 2002) (noting, among other factors to be considered in determining whether the exercise of jurisdiction would be reasonable, the burden on the defendant of defending in the forum). However, plaintiff must first establish sufficient minimum contacts.

engines it sells, that owners of those engines are required to have warranty work performed at a Cummins-authorized service facility, such as Great Lakes, and that Cummins paid Great Lakes to perform the warranty work on the Lassanske motor home. Plaintiff argues that those repairs are sufficiently important to Cummins such that, if they did not have Great Lakes/NPower to perform them, Cummins would undertake those services themselves. It argues that, without Great Lakes/NPower, Cummins' warranties would be rendered meaningless and void *ab initio*. Plaintiff also notes that Cummins is the 100% shareholder of Great Lakes, and describes Great Lakes and NPower as mere extensions of Cummins in essentially functioning as Cummins' warranty repair department.

Defendants respond that agency based on the warranty work, to the extent it exists, confers jurisdiction on Cummins in Wisconsin, where the repairs were completed. They posit that, were the Court to adopt plaintiff's reasoning, a Firestone in Springfield, Massachusetts, for example, would be subject to personal jurisdiction in this Court simply as a result of performing authorized Cummins' repair work that happened to make its way to Washington State.

As asserted by plaintiff, Cummins is obligated to make repairs pursuant to its warranties, relies on its authorized facilities to make those repairs, and requires the holders of the warranties to utilize those facilities to make the repairs. However, it nonetheless does not follow that Cummins would perform the repairs in the absence of Great Lakes. That is, rather than performing the repair work itself, Cummins could presumably authorize a different entity – including one having no other association with Cummins – to perform repair work.

If anything, plaintiff's argument is more reasonably considered as asserting Cummins' respondeat superior liability for the warranty work performed by Great Lakes/NPower. However,

while well taken as a theory of liability, the Court need not address the issue in determining whether this Court has general personal jurisdiction over Great Lakes/NPower.

Morever, even if it could be said that Cummins and Great Lakes/NPower have an agency relationship sufficient to confer general personal jurisdiction over Cummins in Wisconsin for the work performed by Great Lakes/NPower in that state, it also does not follow that the converse application of general personal jurisdiction over Great Lakes/NPower in Washington State would apply in this case. As indicated in the Court's previous decision, "[t]he activities of the parent corporation [in the forum state] are irrelevant absent some indication that 'the formal separation between parent and subsidiary is not scrupulously maintained.'" *Newman v. Comprehensive Care Corp.*, 794 F. Supp. 1513, 1519 (D. Or. 1992) (quoting *Uston v. Grand Resorts, Inc.*, 564 F.2d 1217, 1218 (9th Cir.1977)). Here, as before, plaintiff makes no showing that the formal separation of the entities in question is not scrupulously maintained. *See, e.g., Harris Rutsky & Co. Ins. Servs., Inc.*, 328 F.3d at 1135 ("100% control through stock ownership does not by itself make a subsidiary the alter ego of the parent.") (*See also* Dkt. 58 at 7-8 ("Plaintiff also fails to put forth evidence supporting the conclusion that the entities in any respect failed to observe corporate formalities necessary to maintain corporate separateness.")))

In sum, the Court finds no basis for the extension of jurisdiction over Great Lakes/NPower in this Court. As such, the Court concludes that plaintiff's claims against Great Lakes/NPower should be dismissed based on a lack of general personal jurisdiction.

C. Cummins' and Plaintiff's Motions for Summary Judgment

Cummins and plaintiff raise a variety of arguments in support of their motions for summary judgment. Spartan seeks to join Cummins' motion. However, the Court concludes that these

motions cannot be resolved on summary judgment given the existence of at least one issue of material fact.

As indicated above, there is a dispute among the parties and their various experts regarding causation. Spartan's expert, Brethorst, states:

> Personal knowledge of this particular recall and the requirements of space needed in the general area of the compressor to facilitate removal and replacement of the compressor suggest that the wire and cable bundles that were in the area of the compressor were moved and repositioned in order to secure adequate room for repair due to close tolerances of the engine bay.
>
> During the above repair there is no doubt that the cable in question was moved and repositioned to facilitate the recall. Damage resulted to the cable during or after the repair as a result of the means or way that the cable was then routed and secured.

(Dkt. 72, Ex. 2.) (*See also* Dkt. 72, Ex. 3 (Brethorst concluded: "I believe that the integrity of the Spartan wiring was compromised during the recall and resulted in the loss. I could find no fault or defect with any Spartan component or part.") Fleetwood's expert, John Powell, concurs, stating: "The conductors in the area described in the Brethorst report were most probably moved, rerouted, or repositioned during the removal and replacement of the air compressor during the repairs that were the subject of the Cummins recall campaign." (Dkt. 85, Ex. F4 at 4.)

However, the expert for Cummins, Michael Linscott, disagrees. Linscott first asserts that Brethorst provided no evidence to validate his purported personal knowledge. (Dkt. 85, Ex. F5 at 26.) He further states:

> Based upon the proximate location of where the wire crossed over the frame on the two units, the evidence indicates that the wire was where it was located during chassis assembly. The exemplar unit [looked at by Linscott] had not been in for service on Warranty Campaign 0111. This evidence contradicts the unsupported allegations that representatives from Cummins-Great Lakes in any way separated any cable bundles that created any conditions, resulting in this fire. Moreover according to Cummins, Inc., distributors, such as Cummins-Great Lakes, would not have been instructed to

> move wires during Warranty Campaign 0111. However, based on the observations on the exemplar vehicle and the opinions set forth in Mr. Brethorst's report, if the initiating event was at the cable from the master switch where it crossed over the frame, the routing of the wire in an unsecured method over the frame was not the result of Cummins Great Lakes actions. If abrasion took place it was over the life of the unit.

(*Id.* at 27.) Additionally, plaintiff's expert, Schoenecker, declines any independent knowledge as to whether the relevant cable was in fact re-routed during the recall, pointing to either original placement or re-routing during the recall work as the cause of the fire. (Dkt. 85 at 10 and Ex. C2.)[5]

This dispute raises a genuine issue of material fact and, therefore, precludes a grant of summary judgment. Moreover, plaintiff's argument that it should be granted summary judgment while the remaining defendants "fight it out" amongst themselves is not well taken. Although the Court declines to delve into plaintiff's various claims and arguments, it notes that the motions and responding documents raise both the possibility of additional issues of material fact and pertinent questions regarding plaintiff's claims. As such, the Court does not find a basis for granting plaintiff's motion for summary judgment.

CONCLUSION

For the reasons described above, Fleetwood's Motion for Summary Judgment (Dkt. 75)

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[5] Spartan cites a letter from Schoenecker in response to Brethorst's report as agreeing "that the positive cable from the disconnect switch (mechanic's switch) was not routed correctly nor secured properly as a result of the work performed during the recall." (Dkt. 94, Ex. 3.) However, Schoenecker disputes the depiction of the letter described by Spartan. (*See* Dkt. 104, Ex. 2 (stating the portion of the letter quoted was merely intended to convey Brethorst's assertion and reiterating statement in previous declaration and his testimony that the fire resulted either as a result of the original positioning of the wiring or the re-routing of the wiring during the recall work.))

and Great Lakes/NPower's Motion to Dismiss for Lack of General Personal Jurisdiction (Dkt. 88) are hereby GRANTED, while Cummins' Motion for Summary Judgment (Dkt. 89), joined by Spartan (Dkt. 98), and Plaintiff's Motion for Summary Judgment (Dkt. 82) are hereby DENIED based on the existence of at least one genuine issue of material fact.

DATED this 14th day of April, 2006.

Mary Alice Theiler
United States Magistrate Judge